

³ The Board notes that, following the issuance of the May 21, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish her remaining claims for intermittent disability from work for the period March 5 through April 9, 2021, causally related to her accepted April 30, 2018 employment injury.

FACTUAL HISTORY

On May 8, 2018 appellant then a 41-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2018 she sustained a strained left hip/buttock when she was startled by a snake and fell backwards when delivering mail while in the performance of duty. She stopped work on the filing date of her claim. On June 8, 2018 OWCP initially accepted the claim for strain of the muscle, fascia, and tendon of the left hip, and unspecified strain of the left hip. It later expanded acceptance of the claim to include trochanteric tendinitis/bursitis of the left hip and strain of the gluteus medius. OWCP paid appellant wage-loss compensation on the supplemental rolls as of June 23, 2018 and on the periodic rolls commencing January 6, 2019. It again paid her intermittent wage-loss compensation on the supplemental rolls as of September 15, 2019, following her return to part-time limited-duty work on September 23, 2019.

Appellant filed several claims for compensation (Form CA-7) for disability from work for the period February 27 through April 9, 2021. On March 29, and April 2 and 13, 2021 she filed an accompanying time analysis form (Form CA-7a) wherein she claimed that she used leave without pay (LWOP) as follows: eight hours each on February 27, March 13, 16, 20, 23, and 30, and April 2, and 3, 2021 due to her days off work; two hours on March 1, 2021; 1.34 hours on March 3, 2021; 4.20 hours on March 4, 2021; eight hours each on March 5 and 6, 2021 to receive an injection in her physician's office; 3.48 hours on March 8, 2021; 2.35 hours on March 9, 2021; eight hours on March 11, 2021 due to being placed off work by her physician; eight hours each on March 12, 15, 19, 22, 29 and April 8 and 9, 2021 due to hip pain; 1.46 hours on March 24, 2021; 3.08 hours on March 25, 2021; 2.02 hours on March 31, 2021; 2.85 hours on April, 1, 2021; 2.59 hours on April 6, 2021; and 4.45 hours on April 7, 2021.

In support of her claim, appellant submitted medical reports dated March 4 and 24, 2021 from Juris Eyler, a physician assistant. Mr. Eyler diagnosed pain, unilateral primary osteoarthritis, other articular cartilage disorders of the left hip; sacroiliitis, not elsewhere classified; difficulty in walking, not elsewhere classified, and trochanteric bursitis of the left hip. He advised that appellant could continue to perform sedentary work with restrictions and indicated that her absences from work for a partial day on March 4, 2021 and a full day on March 5, 2021 should be excused due to a hip injection she received on March 4, 2021. On March 24, 2021 Mr. Eyler restricted her to work four-to-six hours per day, three- to four-hour days per week, due to flare-ups of pain and other symptoms effective March 3, 2021.

OWCP, in a development letter dated March 29, 2021, informed appellant that the evidence submitted was insufficient to establish her claim for wage-loss compensation. It advised her of the type of medical evidence necessary to establish her disability claim and afforded her 30 days to submit the requested evidence.

In a separate letter dated March 29, 2021, OWCP requested that the employing establishment indicate whether work was available for appellant on February 27 and March 5, 6, 11, and 12, 2021.

OWCP subsequently paid appellant wage-loss compensation on the supplemental rolls for intermittent disability from work for the period February 13 through 26 and March 8 and 9, 2021.

OWCP received an April 3, 2020 left hip arthrogram report by Dr. Taik-Kun Kim, a Board-certified diagnostic radiologist. Dr. Kim noted that the arthrogram was performed prior to a magnetic resonance imaging (MRI) scan. He provided an impression that the arthrogram was successful and uncomplicated.

On April 6, 2021 the employing establishment responded to OWCP's March 29, 2021 letter, noting that no work was available on February 27, 2021 and eight hours of work was available on March 5, 6, 11, and 12, 2021.

In an April 16, 2021 letter, OWCP requested that the employing establishment provide whether limited-duty work was available for appellant on intermittent dates during the period March 13 through April 9, 2021.

In an initial response dated April 22, 2021, the employing establishment indicated that up to six hours of limited-duty work per day was available on March 13, 15, 16, 19, 20, 22, 23, 29, 30, 31 and April 2, 3, 8, and 9, 2021. It indicated that medical evidence dated March 24, 2020 provided that appellant could work four-to-six hours per day, three-to-four days per week as tolerated.

On April 28, 2021 the employing establishment further responded that appellant had days off from work and was off work based on her physician's order during the period March 13 through April 9, 2021. It noted that her days off from work were March 13, 16, 20, 23, and 30 and April 2, 2021. The employing establishment also noted that appellant was off from work on March 15, 19, 22, and 29 and April 6 and 9, 2021 based on her physician's order. Appellant worked 5.98 hours on March 31, 2021.

OWCP subsequently paid appellant wage-loss compensation on the supplemental rolls for intermittent disability from work for the periods March 13 through 26, 2021 and March 31 through April 7, 2021.

OWCP continued to receive medical evidence. In an April 3, 2021 left hip MRI arthrogram report, Dr. John M. Filigenzi, a Board-certified diagnostic radiologist, provided an impression of mild left hip chondromalacia. Dr. Filigenzi related that appellant had a complex tear of the acetabular labrum extending from the anterior-superior labrum through the posterior-superior labrum, more severe anteriorly as detailed in his report. He also provided impressions of mild degenerative changes of the sacroiliac joints and pubic symphysis, based on review of an April 1, 2020 pelvis MRI scan.

Dr. S. Shar Hashemi, a Board-certified surgeon, noted in reports dated May 10 and 14, 2021 that appellant's history of a 2018 employment-related left hip injury. He discussed: examination findings and diagnosed injury of cutaneous sensory nerve at hip and thigh level, left

leg, initial encounter; injury of other nerves at hip and thigh level, left leg, initial encounter; and causalgia of the left lower limb. Dr. Hashemi placed appellant off work for one month commencing April 29 and May 14, 2021, respectively.

A May 6, 2021 report by Dr. Raj Parekh, an anesthesiologist, noted appellant's history of injury, discussed examination findings, and provided impressions of high risk medication monitoring narcotics, left hip chronic pain syndrome, unspecified and uncomplicated opioid use, generalized anxiety disorder, and left hip labral tear. Dr. Parekh related that there was no doubt that appellant's left hip pain was causing significant disability and pain. He noted that she reported that prior to her accepted employment injury, she was quite active, but now she was limited by her pain and could not adequately perform her work duties.

In a May 21, 2021 decision, OWCP authorized payment of wage-loss compensation for eight hours on February 27, 2021 and two hours each on March 13, 15, 16, 19, 20, 22, 23, 29, 30, and 31 and April 2, 3, 8, and 9, 2021. It also noted that appellant had previously received intermittent wage-loss compensation for March 1, 3, 4, 8, 9, 17, 24, 25, 31, and April 1, 6, and 9, 2021. The claim remained denied, however, as appellant had not provided medical evidence establishing that she was disabled from work as a result of her accepted work-related medical conditions for the remainder of the claimed period.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁶ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.⁷

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a

⁴ *Supra* note 2.

⁵ See *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

⁷ See 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

⁸ *Id.* at § 10.5(f); see, e.g., *G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.⁹

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.¹⁰ The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

For a routine medical appointment, a maximum of four hours of compensation for time lost to obtain medical treatment is usually allowed.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish her remaining claims for intermittent disability from work for the period March 5 through April 9, 2021, causally related to her accepted April 30, 2018 employment injury. Appellant filed a series of CA-7 forms for intermittent disability from work commencing February 27, 2021. The record reflects that OWCP has paid intermittent wage-loss compensation commencing February 27, 2021 for the dates on which eight hours of work was not made available by the employing establishment and for the dates on which appellant received authorized medical treatment.

OWCP received reports from medical providers regarding appellant's disability status during the relevant period. Several reports were submitted by Mr. Eyler, a physician assistant. In a report dated March 4, 2021, Mr. Eyler advised that appellant's absences from work for a partial day on March 4, 2021 and a full day on March 5, 2021 should be excused due to a hip injection she received on March 4, 2021. OWCP paid appellant wage-loss compensation for the time she lost from work to receive the hip injection on March 4, 2021; however, it denied her claim for wage-loss compensation commencing March 5, 2021 as Mr. Eyler's opinion regarding appellant's disability status was of no probative value.¹³ On March 24, 2021 Mr. Eyler restricted her to work four to six hours per day, three to four hour days per week, due to flare-ups of pain and other symptoms effective March 3, 2021. The Board has held that the reports of a physician assistant are of no probative value as a physician assistant is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion. The reports from Mr. Eyler

⁹ *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

¹⁰ *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

¹¹ *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.19(c) (February 2013); *see also K.A.*, Docket No. 19-0679 (issued April 6, 2020).

¹³ *D.B.*, Docket No. 20-0192 (issued November 2, 2020); *S.K.*, Docket No. 19-0272 (issued July 21, 2020).

are, therefore, insufficient to establish appellant's claim, except to establish that appellant received treatment on the dates he provided authorized medical treatment.¹⁴

OWCP also received reports from Dr. Hashemi. In a report dated May 10, 2021, Dr. Hashemi placed appellant off work for one month commencing April 29, 2021. He noted her history of injury and diagnosed injury of cutaneous sensory nerve at the hip and thigh level of left leg and causalgia of the left lower limb. However, Dr. Hashemi did not explain, with rationale, how or why appellant was unable to perform her regular work on the claimed dates of disability due to the effects of her accepted conditions. His other May 14, 2021 report also did not address the relevant period of claimed disability. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.¹⁵ For these reasons, the Board finds that Dr. Hashemi's reports are insufficient to establish appellant's disability claim.

Appellant also submitted a May 6, 2021 report from Dr. Parekh. Dr. Parekh noted a history of the April 30, 2018 employment injury. He diagnosed, *inter alia*, left hip chronic pain syndrome and left hip labral tear. Dr. Parekh opined that appellant's hip pain caused her disability from work. However, he did not offer an opinion as to whether her disability on the claimed dates were causally related to the accepted condition. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁶ Therefore, this evidence is insufficient to establish appellant's disability claim.

Likewise, Dr. Kim's April 3, 2020 procedure note is insufficient to establish appellant's disability claim. In his April 3, 2020 note, he advised that a left hip arthrogram was successful and uncomplicated. However, Dr. Kim did not provide an opinion addressing whether appellant had disability on the claimed dates causally related to an accepted condition and, as such, his note is of no probative value.¹⁷

Appellant submitted left hip MRI arthrogram reports from Dr. Kim and Dr. Filigenzi. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue

¹⁴ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.M.*, Docket No. 20-0019 (issued May 6, 2020); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006); see also *D.B.*, *id.*; *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

¹⁵ See *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *S.K.*, Docket No. 19-0272 (issued July 21, 2020); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁶ See *T.S.*, *id.*; *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ *Id.*

of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's period of disability on specific dates.¹⁸

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period as a result of the accepted employment injury.¹⁹ Because appellant has not submitted rationalized medical opinion evidence sufficient to establish employment-related disability during the claimed period due to her accepted conditions, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish her remaining claims for intermittent disability from work for the period March 5 through April 9, 2021, causally related to her accepted April 30, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁸ See *T.S., id.*; *D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

¹⁹ *Supra* note 6.